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1952.

File No. Agri Pro. M! II/5 (R)

Legal Deptt

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BRANCH

P.10(2) 1952

Subject:— Rules under the Bombay Agricultural Produce Market Act 1939

File No. Agri. Pro. Mkt. II/52 (R)

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Legal Department.

In view of the High Court's decision in the case of Secretary of State for India in Council vs. Bhaskar K. Samant, I.L.R. 49 Bom 759, it would be possible to make a rule on the lines proposed by the Committee under the general provision of sub-section (1) of section 26 of the Act i.e. for carrying out the purposes of the Act. The main principle of the Act is contained in section 11 which authorizes a Market Committee to levy fees for agricultural produce bought and sold in the market area. Rule 53 of the Bombay Agricultural Produce Market Rules, 1941, may therefore be amended as follows:-

"After sub-rule (2) the following Explanation shall be inserted, namely:-

'Explanation.- For the purposes of this Rule, a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured by a licensed weighman and measurer in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area. ".

Sd/- J.R.Dhurandhar

O.C. 20/6

Additional Secretary to Government.

U.R. to D.D., No. 17411/B, dated the 21st October 1952.

Mjr/2/7

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In such cases the proposals approved by the Depart may be consolidated by the Department in the form of draft amendments to facilitate scrutiny and revision by the R.L.A. and the points on which R.L.A's advice is required may be specifically referred to. It is not necessary to refer to the RlL.A. draft amendments to Rules to examine the expediency from the legal point of view.

2. Subject to the following remarks, requisite draft amendments to the Bombay Agricultural Produce Markets Rules, 1941, are appended.

Page 7 ante : The word "trader" used in section 6(1)(ii) and section 26(2)(f) and (s) of the Act must be given its ordinary meaning. It cannot be defined by means of a rule. Such a definition would not be legal.

Pages 11 and 15 ante: The object in view may be made clear by inserting in sub-rule (3) of rule 53 the word "therein" after the words "for use". The necessary amendment is shown as amendment No. 1 in the appended draft.

Page 25: The proposed amendment has been included as draft amendment No. 2 in the appended draft in a revised form. It is covered by section 26(2)(a).

Page 27: The provision is made in sub-section (3B) of section 6 of the Act, which specifies the circumstances under which a person shall cease to be a member. No rule can be made to provide for such disqualification.

Page 31:No change is necessary in clause (a) of rule 8(III). Butas section 6 of the Bombay Agricultural Produce Markets Act, 1939, has now been amendmed by Bom. XXVI of 1951, clause (b) of that rule may be amended as shown in draft amendment No. 3 in the appended draft.

Page 33: In view of the revised second proviso to clause (iii) of sub-section (1) of section 6 substituted.

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by Bom. XXVI of 1951, rules 9 and 10 will have to be amended as shown in draft amendment No. 4 and paragraphs (1)(a), (1)(c) and (2) of amendment No. 5 of the appended draft. It is not now necessary to maintain a separate voters list for the local authorities constituency even if the market area falls within the jurisdiction of two or more local authorities.

Page 39: The requisite amendment is inserted as amendment No. 5, paragraph (1)(b) in the appended draft.

Page 41: The power is taken under rule 10(1) to direct the revision of the list for traders constituency at any time before the next general election and the procedure laid down in the rule of provisional and final publication will apply. No amendment is therefore necessary in rule 10(7).

Page 43: The requisite amendment is included as amendment No. 6 in the appended draft.

Page 45: In view of the provisions of rule 10(7) the proposed amendment is not necessary. Not only that but the words" provided that the preparation and publication of fresh lists of voters shall not be necessary" in rule 24 are redundant in view of the provisions of rule 10(7). They may be deleted (vide also remarks above with reference to page 41). The amendment suggested above is included as amendment No. 7 ,

Page 51: The requisite amendment is included as draft amendment No. 8 in the appended draft.

Page 55: The proposed amendment is necessary and has been included as draft amendment No. 9 in the appended draft.

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Page 61: Th requisite amendments have been included as draft amendments Nos. 10 and 11 in the appended draft. Amendment No. 11 has been so worded that it may notconflict with the Explanation to section 4(2) or rule 53(4).

Page 63: The requisite amendment has been included as draft amendment No. 12 in the revised draft, on the presumption that the third copy of the agreement is to be retained by the purchaser.

Page 67: The requisite amendment has been included as draft amendment No 13. in the revised draft. It is not necessary to insert the word "written" in rule 65(5). Such word occurring in sub-rule(2) is redundant and may be deleted for the sake of uniformity of wording.

Page 71: On the lines of draft amendment No. 13, requisite amendment has been included as amendment No . 14 in the appended draft.

Page 73: Please see draft amendment No. 15 in the appended draft.

Page 75: Please see draft amendment No. 16

Page 77: Please see draft amendment No.17

Page 79: Please see draft amendment No.18

Page 83: Under clause (ii) of sub-section (1) of section 6 not less than one third persons are to be elected by the persons licensed under sub-section (2) of section 4 and by the traders approved by the Market Committee. Under rule 65 a provision is made for granting licence to a general commission agent and under rule 8II(b) all persons approved and registered under rule 65 are qualified to vote in a traders constitutency. As general commission agents enfranchised under rule 65 the only amendment necessary to make the meaning clear is to substitute the word "persons" for "traders" in rule 8(ii) (b). See the amendment at serial No. 19

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Pages 85,87 &89 : Please see the observation in the preceding para.

Page 99:Please see amendment No. 9

Page 103: Please see amendment No. 20

Page 107:- Please see draft amendment No. 18 . The necessary bye-laws will have to be made by the market committee with the previous sanction of the Director required by section 27(1).

Page 109: Please see draft amendment No. 12

Page 111: The expression "its members" in rule 66(2) refers to the total number of members of the market committee and not to members present at a meeting and therefore the rule does not require any amendment.

Page 113: Please see draft amendment No. 16.

Pages 115 to 119: Please see draft amendment No. 17

3. The draft amendments will have to be arranged in consecutive order at the time of publishing them for inviting objections.

Sd/- J.R.Dhurandhar

o.c. 8/1

Additional Secretary to Government.

U.R. to D.D. No. 224, dated the 9th January 1952.

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Legal Department

In place of the draft notification at pages 47-48 C/s a revised draft notification is sent herewith .

2. To avoid repetition, necessary provisions for communicating the orders of the market committee to the persons concerneed and for appeals against such orders have been incorported in new rules 67A and67B.

3. The portion in brackets at pages 47-48 c/s is not necessary since the appellant is bound by the decision of the Committee till it is set aside in appeal. Therefore this portion is deleted from the revised draft.

Sd/- J.R.Dhurandhar
5/5/

O.C.

Additional Secretary to Government.

U.R. to D.D. No. 7133 dated the 6th May 1952.

Mjr/2/7.

4 Cs.

Legal Department.

The suggestion of the Market Inquiry Committee to amend rule 53 of the Bombay Agricultural Produce Market Rules for t purpose of levying a fee on agricultural produce raised in the market area is not in order. Section 11 readwith Sec. 26 (2) (e) of the Bombay Agricultural Produce Markets Act, 1039, empowers the Market Committee to levy fees on agricultural produce bought and sold in the market area. It will be outsid the scope of the Act to permit the levy of fees on the growing or raising of produce in the area.

Sd/- J.R.Dhurandhar

o.c: 27/6

Additional Secretary to Governme

U.R. to D.D., No 10774, dated the 30th June 1952.

Mjr/2/7

4 Cs.

Legal Department.

A revised draft notification is sent herewith. The Development Department is requested to verify whether the revised draft particularly new sub-rule (5A) of rule 10 is suitable and carried out its intention.

Amendment of rule 28:- The reason for the amendment in this rule is that rule 28 provides for the procedure of electing Chairman and Vice-Chairman of the first newly constituted market committee only and it is observed that sometime the meetings are presided over by the Collector or person authorised by him and ~~Sometimes~~ Some times by the outgoing chairman. Section 6(1) provides that every market committee shall be constituted as prescribed "Prescribed" means prescribed by rules (vide Section (2) (1)(ix). Rules 11 to 27 provide for the manner of electic of a market committee. After the election of all the members, their names along with those of the nominated members are published in the Official Gazette under rule 25. Rule 28 provides for the newly constituted committees after every election and not for first newly constituted Committee only. Under sub-section (3) of section 6 every member of a market committee, elected or nominated, when it is first constituted shall hold office for a term of 2 years from the date of the first general meeting of the market committee and every such member elected or nominated thereafter shall hold office for a period of 3 years. Then sub-section (3A) of that section lays down that the term of office of the outgoing members of a market committee shall be deemed to extend to and expire with the day before the day of the first general meeting of the market committee constituted in its place. This being the position, it is not understood how the outgoing chairman who is elected from amongst the members of the Committee would be competent to preside at the first meeting of a newly constituted market committee.

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since his term of office extends to and expires on the day before the day of the first general meeting of the market committee to be convened under rule 28..In these circumstances, it appears that the proposed amendment is uncessary. Development Department is, however, requested to reconsider.

Sd/-

O.C. 25/8

Additional Deputy Secretary to Government

U.R. to D.D. No. 12391 dated, 26th July 1952.

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Legal Department.

In view of the High Court's decision in the case of Secretary of State for India in Council vs. Bhaskar K. Samant, I.L.R. 49 Bom 759, it would be possible to make a rule on the lines proposed by the Committee under the general provision of sub-section (1) of section 26 of the Act i.e. for carrying out the purposes of the Act. The main principle of the Act is contained in section 11 which authorizes a Market Committee to levy fees for agricultural produce bought and sold in the market area. Rule 53 of the Bombay Agricultural Produce Market Rules, 1941, may therefore be amended as follows:-

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Sd/- J.R.Dhurandhar

O.C. 20/6

Additional Secretary to Government.

U.R. to D.D., No. 17411/B, dated the 21st October 1952.

Mjr/2/7

4 Cs.